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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 MICHAEL MAYFIELD, on behalf of himself
11 and others similarly situated,

12 Plaintiff,

13 v.

14 ACE AMERICAN INSURANCE
15 COMPANY,

16 Defendant.

Case No. C18-1695RSM

ORDER TRANSFERRING VENUE

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18 This matter comes before the Court on Defendant ACE American Insurance Company's
19 Motion to Transfer Venue, Dkt. #29. ACE moves to transfer venue to the United States
20 District Court for the Northern District of Georgia. *Id.*

21 Under 28 U.S.C. § 1404, this Court has discretion to transfer this case in the interests of
22 convenience and justice to another district in which venue would be proper. *See Jones v. GNC*
23 *Franchising, Inc.*, 211 F.3d 495, 498 (9th Cir. 2000). Specifically, Section 1404(a) states:

25 For the convenience of parties and witnesses, in the interest of justice, a
26 district court may transfer any civil action to any other district or division
27 where it might have been brought or to any district or division to which all
28 parties have consented.

1 28 U.S.C. § 1404(a). The purpose of this statute is to “prevent the waste of time, energy, and
2 money and to protect litigants, witnesses and the public against unnecessary inconvenience and
3 expense.” *Pedigo Prods., Inc. v. Kimberly-Clark Worldwide, Inc.*, No. 3:12-CV-05502-BHS,
4 2013 U.S. Dist. LEXIS 12690, 2013 WL 364814, at *2 (W.D. Wash. Jan. 30, 2013) (quoting
5 *Van Dusen v. Barrack*, 376 U.S. 612, 616, 84 S. Ct. 805, 11 L. Ed. 2d 945 (1964)).
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7 In the Ninth Circuit, district courts typically apply a nine-factor balancing test to
8 determine whether to transfer a case under § 1404(a), examining: “(1) the location where the
9 relevant agreements were negotiated and executed, (2) the state that is most familiar with the
10 governing law, (3) the plaintiff’s choice of forum, (4) the respective parties’ contacts with the
11 forum, (5) the contacts relating to the plaintiff’s cause of action in the chosen forum, (6) the
12 differences in the costs of litigation in the two forums, (7) the availability of compulsory
13 process to compel attendance of unwilling non-party witnesses, [] (8) the ease of access to
14 sources of proof, and (9) the public policy considerations of the forum state.” *Jones*, 211 F.3d
15 at 498-99.
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18 Plaintiff Michael Mayfield brings this ERISA action as a putative class action. Dkt. #1
19 at 1. As a benefit of his employment with Delta Air Lines, Mr. Mayfield was a participant in
20 an insurance plan (“Plan”) which included accidental death and dismemberment (“AD&D”) insurance.
21 See *id.* at ¶¶ 10-11; Dkt #29-1 at 6. Defendant ACE insured the Plan’s AD&D
22 benefit under the terms of a policy “delivered” in the State of Georgia. Dkt. #29-2 at 77.
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24 The policy provided Mr. Mayfield coverage for him and his wife for accidental loss of
25 life. This case concerns the death of Mrs. Mayfield, ACE’s initial refusal to pay on the claim,
26 and ACE’s current refusal to pay interest on the delayed payment. See Dkt. #1. Mr. Mayfield
27 brings this action on behalf of all others similarly situated—as a putative class action. See *id.*
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1 Mr. Mayfield resides in the Western District of Washington and Defendant ACE is an
2 insurance company licensed to conduct business in the State of Washington, incorporated and
3 with its principal place of business in the State of Pennsylvania. *See id.* The Plan
4 Administrator for the insurance policy at issue is the Administrative Committee of Delta Air
5 Lines, Inc., located in the Northern District of Georgia. *See* Dkt. #29 at 2. The Plan is
6 governed by ERISA but provides that it “shall be governed by the laws of the State of Georgia
7 to the extent not preempted by ERISA.” Dkt. #29-1 at 11.

9 ACE asserts that, in the applicable 3-year period from 2015 to 2018, 114 individuals
10 submitted claims for benefits under the policy, and that of that number 45 reside in Georgia and
11 4 in Washington State. Dkt. #30 (“McCreary Decl.”), ¶ 5.

13 Venue in ERISA cases is proper in any district “where the plan is administered, where
14 the breach took place, or where a defendant resides or may be found.” 29 U.S.C. § 1132(e)(2).
15 ACE argues that venue is proper in the Northern District of Georgia because (1) it is where the
16 Plan is administered (*see* Dkt. #29-2 at 63), (2) the policy that forms the basis for the alleged
17 breach of the Plan was delivered in Georgia (*see* Dkt. #2-2 at 77) and (3) ACE has at least some
18 employees with knowledge of this case in Georgia (*see* McCreary Decl. at ¶ 6).

20 Plaintiff argues that Georgia law is unlikely to arise in this case, which is governed
21 largely by federal law, and that “ACE fails to articulate a single question of state law that might
22 arise.” Dkt. #35 at 7. Plaintiff argues that his choice of forum should be given great weight,
23 and that “as to the Delta plan participants, the majority reside somewhere outside Georgia.” *Id.*
24 at 9. Plaintiff cites *In re Ferrero Litig.*, 768 F. Supp. 2d 1074, 1078 (S.D. Cal. 2011) for the
25 proposition that the class representatives’ choice of forum should be given deference. *Id.*
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1 Plaintiff argues that it is ACE, headquartered in Pennsylvania, and not Delta or the Plan, in
2 Georgia, who corresponded with Plaintiff and ultimately denied his claim. *Id.* at 10.

3 On Reply, ACE generally repeats its prior points, but does offer some additional facts
4 and citations to law. ACE cites the Declaration of Erin Haffner as evidence that the Plan was
5 negotiated and executed in Georgia and cites two cases out of districts in the Ninth Circuit
6 where the transferring court relied on such a factor. *Id.* at 3 (citing Dkt. #41 (Haffner Decl.”), ¶
7 9; *Liberty Surplus Ins. Corp. V. Perma-Pipe, Inc.*, No. C 13-0908 RS, 2013 U.S. Dist. LEXIS
8 121216, at *5 (N.D. Cal. Aug. 26, 2013); *Arrowood Surplus Lines Ins. Co. v. Paul Ryan*
9 *Assocs.*, 2014 U.S. Dist. LEXIS 14923, at *8-9 (D. Haw. Jan. 29, 2014)). ACE cites several
10 cases for the proposition that a Plaintiff’s choice of forum is given less deference if it brought
11 on behalf of a putative class. *Id.* at 5 (citing *Defazio v. Hollister Emp. Share Ownership Tr.*,
12 406 F. Supp. 2d 1085, 1088 (E.D. Cal. 2005); *Lou v. Belzberg*, 834 F.2d 730, 739 (9th Cir.
13 1987)).

14 Based on the record before it, the Court is convinced that this case might have been
15 brought in the Northern District of Georgia, and that it would be more convenient to all parties
16 involved, including potential class members and witnesses, for the case to proceed in that
17 district. Because this is a putative class action, the deference to Plaintiff’s choice of forum is
18 clearly reduced. See *In re Ferrero Litig.*, 768 F. Supp. 2d at 1078 (citing *Lou v. Belzberg*,
19 *supra*). This case is distinct from *Ferrero* in that the connection to this forum is minimal. The
20 apparent remaining issues for this case have more to do with the insurer and less to do with
21 Plaintiff and the circumstances of his late wife’s death. This case has a significant technical
22 connection to Georgia, given that the Plan at issue was negotiated and executed there. To the
23 extent Georgia law may apply to this case, that district is obviously more familiar with that
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1 body of law. Perhaps most importantly, locating this action in the Northern District of Georgia
2 will reduce the costs of litigation for such parties, class members, witnesses, and counsel
3 travelling from within Georgia or other states located on the East Coast. Although both sides
4 speculate as to the location of potential class members, the record appears clear that
5 significantly more class members will be located in or near Georgia than in or near Washington
6 State. All of the above outweighs the reduced deference given to the Plaintiff's choice of
7 forum.
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9 Having reviewed the relevant pleadings and the remainder of the record, the Court
10 hereby FINDS and ORDERS that Defendant ACE American Insurance Company's Motion to
11 Transfer Venue, Dkt. #29, is GRANTED. this matter is hereby TRANSFERRED to the United
12 States District Court for the Northern District of Georgia for all further proceedings.
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15 DATED this 13 day of May 2019.

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18 RICARDO S. MARTINEZ
19 CHIEF UNITED STATES DISTRICT JUDGE
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